

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for reconciliation of its 2009 energy optimization)	Case No. U-16302
plan expenses and revenues.)	
_____)	

At the May 10, 2011 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

History of Proceedings

On April 30, 2010, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting authority to reconcile its energy optimization (EO) plan costs and revenues for 2009 for both its gas and electric divisions, in accordance with the provisions of 2008 PA 295, MCL 460.1001 *et seq.* (Act 295). Consumers also requested authority to collect a financial incentive for exceeding its EO targets, as provided under Section 75 of Act 295.

A prehearing conference was held before Administrative Law Judge Mark E. Cummins (ALJ) on June 6, 2010. At the prehearing conference, the ALJ granted petitions to intervene filed by the Association of Businesses Advocating Tariff Equity (ABATE) and the Michigan Department of

the Attorney General (Attorney General). The Commission Staff (Staff) also participated in the proceedings.

An evidentiary hearing was held on December 10, 2010. On January 5, 2011, the parties filed initial briefs, and on January 19, 2011, Consumers, the Staff, and the Attorney General filed reply briefs. The ALJ issued his Proposal for Decision (PFD) on March 31, 2011. On April 15, 2011, Consumers, the Attorney General, and ABATE filed exceptions. The record in this case consists of 91 pages of testimony and 18 exhibits received into evidence.

Proposal for Decision¹

The ALJ found the record demonstrated that Consumers greatly exceeded its 2009 electric savings target of 107,939 megawatt-hours (MWh) and its gas savings target of 299,623 thousand cubic feet (Mcf). The record further demonstrated that Consumers' energy savings were achieved by spending less than its approved limit and that the benefit cost ratios for both the gas and electric programs, as calculated using the Utility System Resource Cost Test (USRCT), were two to four times higher than the requirements under Act 295. The ALJ therefore recommended that Consumers' EO reconciliation should be approved and that the company should be authorized to collect \$5,685,305 as a financial incentive.

The ALJ rejected the Attorney General's recommendation that Consumers should in the future be required to present a more detailed calculation of its revenues and expenses, along with a more thorough explanation of the reasonableness and prudence of its EO program components. The ALJ pointed out that Consumers provided an extensive annual report (Exhibit A-1) covering all aspects of the company's EO plan and that EO plan spending and savings were verified by two independent consultants. Accordingly, the ALJ determined that Consumers provided more than

¹ The evidence and positions of the parties were addressed in detail in the PFD, pp. 2-10 and will not be repeated here.

sufficient explanation of its calculations and the reasonableness and prudence of its EO programs so that additional evidence should not be required in future proceedings.

The ALJ agreed with the Staff, the Attorney General, and ABATE that the \$5,685,305 financial incentive that Consumers earned should not include interest. The ALJ concurred with the Staff that past interest on the award is not appropriate because although the Commission approved a financial incentive mechanism in its September 29, 2010 order in Case Nos. U-15805 and U-15889, the award itself does not exist until the Commission approves it in this proceeding. The ALJ further agreed that interest is only appropriately awarded as compensation for costs associated with utility borrowing. Because a financial incentive is not a cost incurred by the utility, no interest should be paid on a going-forward basis. The ALJ added that this determination is supported by the fact that Act 295 does not provide for interest in financial incentive calculations and by the fact that the Commission has consistently rejected utility proposals to earn interest on financial awards.

The ALJ also agreed with the Staff, the Attorney General, and ABATE that the financial incentive should be paid through the application of a 12-month surcharge, rather than the 1-month surcharge Consumers proposed. The ALJ concurred with the Staff's observation that although the surcharge amount would be modest, it would nevertheless represent a significant increase in overall EO charges for the month in which the collection occurred. The ALJ added that authorizing Consumers to collect the surcharge over 12 months was consistent with the Commission's determinations in other EO reconciliation cases. The ALJ therefore recommended that the Commission authorize Consumers to collect the surcharge over 12 months beginning with the company's first billing cycle following the issuance of the order in this case.

The ALJ agreed with Consumers' concerns with regard to the Attorney General's proposal to

allocate the surcharge based on each customer's historical usage. As Consumers pointed out, EO surcharges are not solely allocated on the basis of consumption; for electric commercial and industrial class customers, EO surcharges are allocated on a per-billing-meter basis. Thus, the Attorney General's recommendation is flawed and unworkable in this circumstance.

The ALJ rejected ABATE's claims regarding the effect of Consumers' EO plan on the construction and cost of renewable generation and its contention that gas transportation customers should be exempt from EO surcharges. As to the latter claim, the ALJ pointed out that the Commission has repeatedly addressed and rejected ABATE's arguments on this issue.

Finally, the ALJ observed that both the Staff and the Attorney General expressed agreement with Consumers' proposal to modify its EO savings targets for large gas transportation customers; however these parties recommended that the modification be extended through 2010 only, on grounds that the Commission is currently reviewing policy options for addressing EO surcharges for transportation-only customers.

Exceptions and Replies

In its exceptions, Consumers argues that the ALJ erred in recommending that the Commission deny interest on the financial incentive award. Consumers asserts that the timing of the financial award should recognize the time value of money and that it is fundamentally fair that the company be compensated for the fact that the award is not timely received. Consumers points out that while the Attorney General is correct that the statute authorizing the financial incentive does not reference interest, it nevertheless does not preclude the payment of interest on a financial award.

Consumers also claims that the ALJ's recommendation that the award be collected over 12 months was erroneous. Consumers observes that although spreading the award over 12 months will reduce the effect on customer bills, it notes that collecting the financial award in one month

includes only \$0.57 for residential electric customers and \$0.88 for residential gas customers.

The Attorney General takes exception to the ALJ's finding that Consumers need not be required to submit more detailed information in future filings. The Attorney General contends that the reasonableness and prudence standard in MCL 460.1073(2) is independent of the benefit cost analysis calculated by the USRCT and that failure to address the reasonableness and prudence of the program spending would violate the rules of statutory construction.

The Attorney General also took exception to the ALJ's recommendation to allocate the recovery of the financial award on the basis of future usage rather than on the basis of historical data from 2009. The Attorney General maintains that the customers who received the benefits of the 2009 EO program should also be required to pay the financial award, noting that some customers who will be charged for the financial award in 2011 were not customers in 2009.

ABATE argues that ratepayers should not be charged to support an award to the utility for simply complying with Act 295. ABATE also objects, as it has in the past, to the fact that gas transportation-only customers pay for any EO charges, including the financial award. ABATE points out that gas transportation-only customers do not purchase gas from Consumers and therefore do not benefit from the EO programs. ABATE requests that the Commission take official notice of the record in Consumers' pending rate case, Case No. U-16418, wherein Robert G. Ozar, Manager of the Energy Efficiency Section in the Commission's Electric Reliability Division, testified that such limited EO program funding is available to gas transportation customers that these customers should be excluded from Consumers' decoupling mechanism.

Discussion

Section 73 of Act 295 provides that "a provider's energy optimization plan shall be filed,

reviewed, and approved or rejected by the commission and enforced subject to the same procedures that apply to a renewable energy plan.” MCL 460.1073. Section 49 of Act 295 provides that, along with the submission of the EO Annual Report, the Commission shall commence a cost reconciliation for each electric provider whose rates are regulated by the Commission. MCL 460.1049(1). Section 49(3) establishes the following requirements for an EO reconciliation proceeding:

The commission shall reconcile the pertinent revenues recorded and the allowance for the non-volumetric revenue recovery mechanism with the amounts actually expensed and projected according to the electric provider’s plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period.

The Commission finds that Consumers’ 2009 proposed EO reconciliation should be approved as modified below. The Commission finds that the record shows that Consumers achieved electric savings of 145,118 MWh, 132% of the reduction of 107,939 MWh mandated by MCL 460.1077. 2 Tr 24. Consumers’ electric EO program received a USRCT score of 4.4, demonstrating that its EO plan was cost effective and that its reasonable and prudent EO program costs are therefore recoverable in accordance with MCL 460.1089. 2 Tr 11. For its gas EO program, Consumers achieved savings of 396,783 Mcf, compared to required savings of 299,623 Mcf, with a USRCT score of 2.2. 2 Tr 26, 29.

The Commission agrees with the ALJ that it is not appropriate for Consumers to collect interest on its financial incentive, awarded for exceeding the mandated energy savings. As the Staff pointed out, interest is generally allowed in cases where the utility incurs a cost and must borrow money to cover that cost. In the case of a financial award, there is no cost to the utility, thus no carrying charges need accrue. *See also*, February 8, 2011 orders in Case No. U-16358, pp. 11-12, and Case No. U-16289, pp. 8-9.

The Commission also agrees with the ALJ that the financial award should be collected over 12 months rather than in one month as proposed by Consumers. As explained by the Staff, although the one-month surcharge amount is small, it nevertheless represents an increase in the range of 60% to 90% to the monthly EO surcharge. The Commission therefore finds that Consumers should be authorized to include its financial incentive award in its energy optimization surcharge on a bills rendered basis beginning with the June billing cycle and continuing for 12 months, as shown in Attachment 1 to this order.²

While the Commission agrees with the Attorney General that the reasonableness and prudence of EO plan expenditures is a separate inquiry from the USRCT calculation,³ the Attorney General failed to raise any specific issues regarding program spending that he believes may have been unreasonable or imprudent. A review of the company's EO report, presented in Exhibit A-1, indicates that Consumers' programming deviated little from its approved EO plan, and actual spending on individual program components was generally (but not always) less than identified in the plan. For each program or component, the EO report describes the program, summarizes the logic behind it, and discusses the incentive, implementation, and marketing strategies used to deploy the program. In addition, the annual report summarizes participation levels, costs and energy savings for each program component. Despite the fact that "there is only one mention of reasonableness and prudence" in Consumers' testimony, "and that testimony does not attempt to quantify or explain why the expenses incurred were reasonably and prudently incurred," the Attorney General had sufficient information available from Consumers application and supporting

² In order to limit complexity of the company's bills, the Commission authorizes Consumers to adjust its monthly EO surcharge to include the financial incentive over 12-months.

³ A USRCT score above 1 is nevertheless substantial evidence that the overall EO program was reasonable and prudent.

testimony and exhibits to contest the reasonableness or prudence of any part of Consumers' EOP. Attorney General's exceptions, p. 3. Furthermore, the Attorney General, or any other party, may avail himself of the discovery process if more information is required concerning the specific nature of the costs incurred or the reasonableness or prudence of any or all program expenditures.

In its exception, ABATE requests that the Commission take official notice of certain information from Case No. U-16418. The process for taking official notice of non-record information is controlled by MCL 24.277, which requires the Commission to "notify parties at the earliest practicable time of any noticed fact which pertains to a material disputed issue which is being adjudicated, and on timely request the parties shall be given an opportunity before final decision to dispute the fact or its materiality." According to MRE 201(b), "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The Commission declines the invitation to officially notice the material identified by ABATE because doing so would unnecessarily delay this proceeding, and the testimony at issue constitutes facts that are subject to reasonable dispute.

Finally, the Commission agrees with the ALJ that an historical refund is not feasible in this case. Moreover, the Commission notes that it has addressed the issue of future versus historical refunds several times in the context of refunds related to self-implemented rate increases. *See, e.g.*, December 21, 2010 order in Case No. U-16441, pp. 7-8; January 20, 2011 order in Case No. U-16447.

THEREFORE, IT IS ORDERED that:

A. The energy optimization plan reconciliation proposed by Consumers Energy Company is approved as modified by this order.

B. Consumers Energy Company is authorized to collect a total financial incentive award of \$5,685,305.

C. Consumers Energy Company is authorized to include its financial incentive award in its energy optimization surcharge on a bills rendered basis beginning with the June billing cycle and continuing for 12 months, as set forth in Attachment 1 to this order.

D. Within 15 days of the date of this order, Consumers Energy Company shall submit tariff sheets substantially similar to those attached as Attachment 1 to this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of May 10, 2011.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Greg R. White, Commissioner

SURCHARGES

Each Rate Schedule may be subject to Rule No. C8., Customer Attachment Program.

Energy Optimization
Program Surcharge⁽¹⁾
(Case Nos. U-16412, U-15889
and U-16302)
Effective beginning the
June 2009 Bill Month through the
December 2014 Bill Month⁽²⁾

Rate Schedule

Rate A	<u>\$0.2383/Mcf</u>
Rate A-1	<u>\$0.2383/Mcf</u>
Rate GS-1	<u>\$0.1219/Mcf</u>
Rate GS-2	<u>\$0.1219/Mcf</u>
Rate GS-3	
0 – 100,000 Year	<u>\$0.1219/Mcf</u>
> 100,000 Year	<u>\$0.0108/Mcf</u>
Rate GL	NA
Rate ST	
0 – 100,000 Year	<u>\$0.1219/Mcf</u>
> 100,000 Year	<u>\$0.0108/Mcf</u>
Rate LT	
0 – 100,000 Year	<u>\$0.1219/Mcf</u>
> 100,000 Year	<u>\$0.0108/Mcf</u>
Rate XLT	
0 – 100,000 Year	<u>\$0.1219/Mcf</u>
> 100,000 Year	<u>\$0.0108/Mcf</u>
Rate CC	Per applicable distribution Rate Schedule

⁽¹⁾ All surcharges shall be applied on a monthly basis. The customer's consumption will be reviewed annually in the January bill month. Following the annual review, the customer may be subsequently moved to the surcharge level for their applicable rate for the next billing period based on the customer's average consumption for the previous year. No retroactive adjustment will be made due to the application of EO surcharges associated with increases or decreases in consumption.

⁽²⁾ An Energy Optimization Program Surcharge will be in effect for the period of the June 2009 Bill Month through the December 2014 Bill Month. The amount may vary during specific months as authorized by the Michigan Public Service Commission.

Issued by
J. G. Russell,
President and Chief Executive Officer,
Jackson, Michigan

Effective for bills rendered on and after
the Company's June 2011 Billing Month

Issued under authority of the
Michigan Public Service Commission
dated
in Case No. U-16302

SURCHARGES

<u>Rate Schedule</u>	Renewable Energy Plan Surcharge (Case No. U-15805) Effective for September 2009 Bill Month	Energy Optimization Electric Program Surcharge (Case Nos. U-15805, U-16412, and U-16302) Effective beginning the June 2009 Bill Month	Energy Optimization Self-Directed Customer Surcharge (Case Nos. U-15805, U-16412, and U-16302) Effective beginning the June 2011 Bill Month⁽²⁾
Residential Rates	\$ 2.50/billing meter	<u>\$0.002054</u> /kWh	NA
Rate GS and GSD ⁽¹⁾			
Tier 1: 0 – 1,250 kWh/mo.			
Commercial	\$ 3.70/billing meter	<u>\$ 1.20</u> /billing meter	\$ 0.05/billing meter
Industrial	\$ 4.00/billing meter	<u>\$ 1.20</u> /billing meter	\$ 0.05/billing meter
Tier 2: 1,251 – 5,000 kWh/mo.			
Commercial	\$ 14.00/billing meter	<u>\$ 6.82</u> /billing meter	\$ 0.26/billing meter
Industrial	\$ 15.00/billing meter	<u>\$ 6.82</u> /billing meter	\$ 0.26/billing meter
Tier 3: 5,001 – 30,000 kWh/mo.			
Commercial	\$ 16.58/billing meter	<u>\$ 40.89</u> /billing meter	\$ 1.58/billing meter
Industrial	\$140.00/billing meter	<u>\$ 40.89</u> /billing meter	\$ 1.58/billing meter
Tier 4: 30,001 – 50,000 kWh/mo.			
Commercial	\$ 16.58/billing meter	<u>\$ 40.89</u> /billing meter	\$ 1.58/billing meter
Industrial	\$140.00/billing meter	<u>\$ 40.89</u> /billing meter	\$ 1.58/billing meter
Tier 5: > 50,000 kWh/mo.			
Commercial	\$ 16.58/billing meter	<u>\$ 40.89</u> /billing meter	\$ 1.58/billing meter
Industrial	\$140.00/billing meter	<u>\$ 40.89</u> /billing meter	\$ 1.58/billing meter
Rate GP and GPD ⁽¹⁾			
Tier 1: 0 – 5,000 kWh/mo.	\$ 15.00/billing meter	<u>\$ 3.38</u> /billing meter	\$ 0.13/billing meter
Tier 2: 5,001 – 10,000 kWh/mo.	\$187.50/billing meter	<u>\$ 25.66</u> /billing meter	\$ 0.98/billing meter
Tier 3: 10,001 – 30,000 kWh/mo.	\$187.50/billing meter	<u>\$ 64.99</u> /billing meter	\$ 2.51/billing meter
Tier 4: 30,001 – 50,000 kWh/mo.	\$187.50/billing meter	<u>\$140.92</u> /billing meter	\$ 5.43/billing meter
Tier 5: > 50,000 kWh/mo.	\$187.50/billing meter	<u>\$655.64</u> /billing meter	\$26.18/billing meter
Rate E-1	NA	NA	NA
Rate GSG-1, GSG-2	NA	NA	NA
Rate GML			
Tier 1: 0 – 1,250 kWh/mo.	\$ 3.00/billing meter	NA	NA
Tier 2: 1,251 – 5,000 kWh/mo.	\$ 9.00/billing meter	NA	NA
Tier 3: >5,000 kWh/mo.	\$ 15.00/billing meter	NA	NA
Rate GUL	\$ 0.64/luminaire	NA	NA
Rate GU-XL	\$ 0.64/luminaire	NA	NA
Rate GU			
Tier 1: 0 – 1,250 kWh/mo.	\$ 1.00/billed account	NA	NA
Tier 2: 1,251 – 5,000 kWh/mo.	\$ 7.00/billed account	NA	NA
Tier 3: >5,000 kWh/mo.	\$ 13.00/billed account	NA	NA
Rate PA	NA	NA	NA
Rate ROA-R, ROA-S, ROA-P	NA	As in Delivery Rate Schedule	As in Delivery Rate Schedule

All Surcharges shall be applied on a monthly basis. The customer's consumption will be reviewed annually in the January bill month. Following the annual review, the customer may be subsequently moved to the Surcharge level for their applicable rate for the next billing period based on the customer's average consumption for the previous year. In situations where no historical consumption is available, the monthly Surcharge level will be based on the lowest consumption category for the secondary rate schedules or the lowest consumption category for primary rate schedules. No retroactive adjustment will be made due to the application of the REP or EO Surcharges associated with increases or decreases in consumption.

- (1) Customers taking the Municipal Pumping Service Provision shall be excluded from the Renewable Energy Plan Surcharge.
- (2) An eligible customer who files and implements a self-directed plan in compliance with Rule C12 is required to pay the Energy Optimization Self-Directed Program Surcharge.

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